IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Jurgen Moser
Serial Number:	10/649,325
Filed:	August 27, 2003
Group Art Unit:	3634
Examiner:	Redman, Jerry E.
Title:	CARRIAGE FOR A WINDOW LIFTER

M/S After Final
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Appellant submits this Appeal Brief pursuant to the Notice of Appeal filed August 3, 2005. Enclosed is a check for the appeal brief fee. Any additional fees or credits may be charged or applied to Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds.

REAL PARTY IN INTEREST

The real party in interest is ArvinMeritor GmbH, assignee of the present invention.

RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings related to this appeal, or which may directly affect or may be directly affected by, or have a bearing on, the Board's decision in this appeal.

STATUS OF CLAIMS

Claims 1-4, 7-13, and 16-21 are pending, rejected, and appealed. Claims 5, 6, 14, and 15 are indicated as allowable.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The subject invention relates to a carriage for a window lifter, which includes a base part movably mounted on a rail installed in a vehicle, and a clamping part that is mounted on the base part so that an adjustable vehicle pane can be clamped between the base part and the clamping part. See paragraph [2].

Figures 1 to 5 show a carriage according to one embodiment of the invention. The carriage has a base part 10 and a clamping part 12 (shown in Figures 1 and 2). The base part 10 has a body portion 14 and a sliding portion 16. The sliding portion 16 is movably mounted in a rail of a window lifter. See paragraph [23].

The body portion 14 is provided with a threaded bore 20 that receives a clamping screw 22. The body portion 14 also includes four recesses 24, which are diametrically opposed in pairs with respect to the middle axis of the bore 20 (Figure 3). At the outer edge of the body portion 14, there are also four barbs 26 which constitute an embossed portion. The barbs 26 are designed such that the edges protruding from the plane of the body portion 14 point toward the middle of the body portion, namely on the side of the body portion which cannot be seen in Figure 2. The recesses 24 and the barbs 26 are arranged so that the base part 10 is symmetrical with respect to a longitudinal axis extending through the bore 20 (see Figure 3 with the longitudinal axis L). See paragraph [24].

The clamping part 12 has an opening 28 for the passage of the clamping screw 22 as well as a tab 30 at a lower edge in the orientation shown in Figure 2. The tab 30 is bent in the manner of a hook and extends from a supporting portion 32, which is formed at the lower edge of the clamping part 12. See paragraph [25].

At the upper edge of the clamping part 12 (in the orientation shown in Figure 2), the clamping part 12 is provided with a barb 34, which likewise constitutes an embossed portion. The edge protruding from the plane of the clamping part 12 points towards the opening 28 and is located on the side of the clamping part that can be seen in Figure 2. See paragraph [26].

A pad 36 made of rubber or another resilient material is mounted between the clamping part 12 and the base part 10. The rubber pad 36 has two lips 38 that cooperate with the barbs 26, 34 at the base part 10 and at the clamping part 12 so that the rubber pad 36 can reliably be

retained on the carriage. The horizontally extending bottom of the rubber pad 36 supports the lower edge of a window pane to be accommodated by the carriage. See paragraph [27].

A nipple holder 40 is mounted on the base part 10 and can receive a nipple of a cable via which the carriage can be adjusted along the rail of the window lifter. See paragraph [28].

Figure 3 schematically shows a front rail 42 and a rear rail 44 of a window lifter. The two rails 42, 44 are mounted in, for instance, the left door of a vehicle. A carriage with a base part 10 is movably mounted in each of the rails. In this example, the two carriages have the same structure; the carriage mounted at the front rail 42 is merely rotated by 180° with respect to the carriage mounted at the rear rail 44, as is indicated by the arrow P. Due to the plurality of recesses 24, which together with the tab 30 and the clamping screw 22 form an arresting mechanism, the same clamping part can be mounted at the base part 10 in different positions, as can be seen with reference to Figure 4. See paragraph [30].

The clamping part 12 is mounted at the base part 10 such that the tab 30 extends through one of the recesses 24 until the supporting portion 32 of the clamping part 12 abuts at the body portion 14 of the base part 10 (see Figure 5). This is possible because the tab 30 is bent with respect to the plane of the supporting portion 32. After the clamping screw 22 is screwed into the bore 20, the clamping part 12 is aligned at the base part 10 in a position adapted to the respective mounting position. It can easily be seen that in the present case, in which the base part 10 is rotated by 180°, the two diametrically opposed recesses 24 of a pair of recesses are used in order to mount the base part 10 both at the front rail 42 and at the rear rail 44. See paragraph [31].

The base part 10 must be rotated by 180° about an axis which is horizontal with respect to Figures 4 and 5, so that the base part 10 can be used on the front rail 42 on the right side of the vehicle and not on the front rail on the left side of the vehicle. The same is true for the base part 10 disposed at the rear rail 44. When the clamping part 12 is then mounted at the corresponding base part 10, the previously unused two recesses are utilized. See paragraph [32].

Figures 6 to 11 show a carriage according to another embodiment of the invention. One main difference between the first and the second embodiments is that the second embodiment includes a single recess 25 instead of two separate recesses 24 next to each other. This single recess 25 is arcuate and extends approximately over the angular range which in the carriage in accordance with the first embodiment is defined by the two recesses 24. The center of curvature of each recess 25 coincides with the middle axis of the bore 20 for the clamping screw 22. See paragraph [34].

Another difference between the first and the second embodiments is that the second embodiment has two stop arms 46 at the clamping part 12. These stop arms 46 serve to support the lower edge of a window pane 80 to be accommodated by the carriage. The two stop arms 46 extend approximately vertically to the plane defined by the body of the clamping part 12 toward the base part 10. See paragraph [35]. Another difference is that the second embodiment has two separate pads 37 that form the rubber pad. Each pad 37 has a through opening 48 that accommodates the clamping screw 22. See paragraph [36].

The arcuate recess 25, together with the tab 30, determines the alignment of the clamping part 12 relative to the base part 10 within certain angular limits; note that precise alignment is not

predetermined and not required. Thus, it is possible that while the window pane 80 is mounted at the carriage, the clamping part 12 can take any position, for instance, maximally swiveled in clockwise direction, as is shown in Figure 9. See paragraph [37].

Independent claim 1 is direct to a carriage for a window lifter that includes a base part that is movably mountable on a rail, and a clamping part that is mounted on the base part, wherein the base part and the clamping part accommodate a vehicle pane therebetween. See paragraphs [23] and [27]. Claim 1 also recites an arresting mechanism that secures the clamping part on the base part in one of at least two positions, each of the at least two positions corresponding to a different mounting orientation. See paragraph [30].

Independent claim 13 is directed to a carriage for a window lifter that includes a base part that is movably mountable on a rail, the base part having a bore, wherein the carriage is symmetrical with respect to an axis extending through the bore. See paragraphs [23] and [24]. Claim 13 also recites a clamping part that is mounted on the base part such that the base part and the clamping part accommodate a vehicle pane therebetween, and at least one resilient pad disposed between the clamping part and the base part, wherein the at least one resilient pad forms a pocket for receiving the vehicle pane. See paragraph [27]. Claim 13 further recites an arresting mechanism that secures the clamping part on the base part in one of at least two positions, each position corresponding to a different mounting orientation, wherein the arresting mechanism comprises a clamping screw which can be screwed into the bore in the base part so that the clamping part can be tensioned against the base part. See paragraph [30].

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-4, 7-10, 13, 16, 17, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. DE 19650265 to Lange et al (Lange).

B. Claims 11, 12, 18, and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent No. DE 19650265 to Lange et al (Lange) in view of US Patent No. 5,987,820 to Shibanushi (Shibanushi).

ARGUMENT

A. Anticipation Rejection Over Lange

Claims 1-4, 7-10, 13, 16, 17, 20, and 21 stand rejected under 35 U.S.C. 102(b) as being anticipated by Lange (DE 19650265).

Claims 1, 9-10, and 20

Claim 1 recites a carriage for a window lifter that includes a base part that is movably mountable on a rail, a clamping part mounted on the base part wherein the base part and the clamping part accommodate a vehicle pane therebetween, and an arresting mechanism that secures the clamping part on the base part in one of at least two positions with each position corresponding to a different mounting orientation.

The examiner argues that Lange discloses a base part 20 movably mounted on a rail 8 and a clamping part 9b that is mounted for swiveling movement on the base part 20. Appellant respectfully asserts that this interpretation of Lange is not reasonable.

While it is well settled that the terms in a claim are to be given their broadest reasonable interpretation, this interpretation must be consistent with the specification, with claim language

being read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Bond, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). Appellant's clamping part 12, as defined in the claims and in the specification, is mounted to the base part 10 such that the window pane is accommodated between the clamping part 12 and the base part 10.

Component 9b in Lange, which the examiner argues corresponds to applicant's claimed clamping part, is not a clamping part. Instead, components 9a and 9b of Lange form a sliding mechanism that engages the rail 8. In the list of components at column 4 of Lange, component 9 is identified as "Gleiter," which is the German word for "slider." The English abstract submitted with Lange also identifies component 9 as a "slide-piece." The list of components at column 4 also identifies components 9a and 9b as "Stutzblech," which means support plates. These support plates 9a, 9b cooperate with each other to form the slider 9.

Lange utilizes other components for clamping. Lange provides a clamping mechanism with two spaced clamping parts 10a, 10b that cooperate with clamping jaws 2 to hold the window pane 7 therebetween. The clamping part 10a (at the right of Figure 1) is connected to slider 9, which is received within guide rail 8 that extends along the displacement path of the window pane 7. These components are clearly identified in the English abstract that was provided for the Lange reference.

Between each clamping part 10a, 10b and each corresponding clamping jaw 2 is a rubber element 3 that contacts the window pane 7. By using the rubber elements 3, which have inner surfaces 31, 32 that act on the window pane 7 as clamping surfaces, the actual clamping surface is arranged in front of, i.e. to one side of, profiled guide 1. Slider portion 9b is behind, i.e. on an

opposite side of, the profiled guide 1. The configuration provided by Lange ensures that the window pane is solely clamped in the designated clamping areas 10a, 10b.

Thus, component 9b of Lange does not provide any type of clamping function. As clearly shown in Figure 3 of Lange, the window pane is clamped between component 10a and clamping jaw 2. This clamping occurs even if component 9b is not assembled to the profiled guide 1. Thus, component 9b is clearly not a clamp and one of ordinary skill in the art simply would not consider component 9b of Lange as corresponding to the claimed clamping part, especially when Lange clearly identifies other components, i.e. components 10a, 10b, and 2, as providing the clamping mechanism.

The examiner also argues that Lange discloses a clamping part 9b that allows for at least two positions where each of the two positions corresponds to a different mounting orientation. The examiner argues that Lange discloses an arresting mechanism comprising "the fastener/clamping nut, bolt and bore, the ridge/tab at element 90a which fits within recess at element 96 which has a circular portion and which allows swiveling." See Page 2, lines 15-18. Final Office Action dated May 18, 2005. Appellant respectfully disagrees with this interpretation of Lange.

For the reasons set forth above, applicant asserts that component 9b cannot be reasonably interpreted to correspond to the claimed clamping part. However, even assuming component 9b could somehow be interpreted as being a clamping part, component 9b cannot be mounted in two different positions. Thus, Lange does not disclose the use of an arresting mechanism that can be used to secure the clamping part on the base part in multiple different mounting orientations.

As shown in Figure 3 of Lange, component 9b is attached to component 9a by a plurality of rivets that extend through openings 98. Further, in order to accurately and precisely orientate component 9b relative to component 9a, openings 97b are provided in component 9b that receive projections 97a formed on component 9a. When viewing Figure 3, due to the specified mounting configuration, it is clear that there is *only one* position in which component 9b can be attached to component 9a. If component 9b were to be rotated to any position other than that which is shown in Figure 3, the openings 97b would not be aligned with the projections 97a. Thus, component 9b can only be attached to component 9a in one mounting position.

The structures identified by the examiner as corresponding to the claimed arresting mechanism simply do not allow for multiple different mounting orientations between the clamping part and the base part as claimed. One of ordinary skill would not interpret the examiner's fastener/clamping nut, bolt and bore, the ridge/tab at element 90a which fits within recess at element 96, etc., as corresponding to appellant's claimed arresting mechanism, especially as Figure 3 of Lange clearly shows that there is only one possible mounting orientation. Thus, appellant respectfully asserts that the examiner's interpretation of the Lange reference is not reasonable, and further is directly contrary to the intended operations and functions of the components set forth in Lange.

The examiner argues that Lange allows for at least two mounting positions because the clamping part 9b is swivelly mounted on the base part 20 such that the clamping part 9b and base part 20 can rotate with respect to each other. This is not relevant to the language set forth in claim 1. Claim recites that the arresting mechanism secures the clamping part on the base part in

one of at least two positions, each of the at least two positions corresponding to a different *mounting* orientation. The swiveling movement to which the examiner refers concerns a clearance between the slider 9 and rail 8 to allow restricted swiveling between the profiled guide 1, joined to the slider 9, and the guide rail 8 along the vehicle's transverse axis. See English abstract for Lange. This has nothing to do with different mounting orientations of the clamping part to the base part.

Appellant has not claimed swiveling movement between a profiled guide and a rail. Appellant has claimed the utilization of an arresting mechanism that secures the clamping part on the base part in one of at least two different mounting orientations. Swiveling movement between the profiled guide and rail in Lange can not be reasonably interpreted as anticipating this feature.

The examiner further states, "Assuming that the applicant is arguing that the clamping part 9b cannot be mounted to component 9a in multiple positions in [sic] not readily understood by the Examiner since the clamping part 9b is rotatably mounted thereto." For the reasons set forth above, it is clear from Figure 3 of Lange that component 9b of Lange is fastened to component 9a with fasteners via fastening openings 98 such that there is no swiveling movement between components 9a, 9b.

Again, appellant is claiming that the clamping part can be secured to the base part in any one of multiple different mounting orientations. The benefit of this is that a common part can be used for different rail locations within the vehicle. This eliminates the need for four different component versions, namely one version each for the front rail on the left side of the vehicle, for

the front rail on the right side of the vehicle, for the rear rail on the left side of the vehicle, and for the rear rail on the right side of the vehicle. See paragraph [3] of the subject application. There is absolutely no disclosure in Lange of an arresting mechanism that secures the clamping part on the base part in one of at least two different mounting orientations.

Finally, the examiner characterizes appellant's argument as stating, "clamping jaw (2) cannot be mounted to component 9a in multiple positions." See Page 4, lines 10-12 of the Final Office Action dated May 18, 2005. This is not what appellant is arguing. The examiner has identified component 20 (identified in Lange as part of clamping jaw 2) as the base part, and component 9b as the clamping part. Appellant is arguing that Lange does not disclose an arresting mechanism where the clamping part 9b is secured to the base part 20 in one of at least two different mounting positions. Figure 3 shows that clamping part 9b is secured to part 9a in one mounting position, which is the only mounting position possible for component 9b. Clamping jaw 2, 20 is secured to clamping part 10a, 10b in one mounting position, which, again, is the only possible mounting position for clamping jaw 2, 20. If component 9b has only one possible mounting position and component 20 has only one possible mounting position, how can component 9b be secured to component 20 in more than one mounting position?

The examiner further states that clamping part 9b can be mounted to component 9a in multiple mounting positions because clamping part 9b is rotatably mounted to component 9a. Lange clearly does not disclose a rotatable connection between components 9a and 9b. The only swiveling movement provided by Lange is that of the profiled guide 1 relative to the rail 8. There is no disclosure of components 9a and 9b rotating relative to each other. Even if

components 9a and 9b could be rotated relative to each other there is no disclosure of this alleged rotation corresponding to two different mounting orientations as claimed. Rotation between components 9a and 9b does not correspond to securement of clamping part 9b to base part 20 in one of two different mounting orientations as claimed.

Further, there is no reason for component 9b in Lange to be mounted in multiple different mounting orientations. Component 9b is a slider component and thus is secured to corresponding slider component 9a to form the slider mechanism 9 that slides along the rail 8. Mounting component 9a at a different position relative to component 9b would hinder sliding movement along the rail. Further, rotation of component 9a relative to 9b would hinder sliding movement of the carriage along the rail 8.

Appellant respectfully asserts that the examiner's position regarding the operation and function of the various components in Lange is not accurate. The examiner appears not to fully understand how the window regulator of Lange works. In a previous response, appellant provided the examiner with a copy of US 6041549 to Schust et al. (Schust) to provide a general description of how the Lange window regulator operates. A copy of this reference is attached in the Evidence Appendix of the subject Appeal Brief. Schust is not an exact counterpart to Lange, but is part of the same patent family. The Schust reference shows a window regulator that generally corresponds to the embodiment shown in the German Lange reference applied by the examiner. It is clear from the Schust reference that appellant's invention is very different from that set forth in Lange.

Appellant has repeatedly requested that the examiner obtain a translation of the Lange reference (" . . . obtaining translations is the responsibility of the examiner. A review by the examiner and applicant of translations of the prior art relied upon in support of the examiner's rejection may supply additional relevant evidence on issues of anticipation and obviousness . . . and may eliminate the need for an appeal.", Ex parte Gavin, 62 USPQ2d 1680, 1684 (U.S. Patent and Trademark Office Board of Patent Appeals and Interferences, 2001)). Appellant respectfully reiterates the request for a translation such that clear support in Lange for the examiner's position regarding the specific functions and operations of the slider 9, clamping parts 10a, 10b, clamping jaw 2, etc. can be provided to appellant.

For the many reasons set forth above, Lange clearly does not anticipate claims 1, 9-10, and 20, and appellant respectfully requests that the rejection be reversed.

Claim 2

Claim 2 recites that the arresting mechanism comprises a clamping screw that can be screwed into a bore in the base part so that the clamping part can be tensioned against the base part.

The examiner argues that Lange discloses an arresting mechanism comprising "the fastener/clamping nut, bolt and bore, the ridge/tab at element 90a which fits within recess at element 96 which has a circular portion and which allows swiveling." See Page 2, lines 15-18. Final Office Action dated May 18, 2005. The examiner has not identified a specific bore in the "base part 20" that corresponds to the claimed bore, however appellant is assuming that

examiner is referring to element 215 in Figure 3. If this is not the case, appellant respectfully requests that the examiner provide additional explanation of the rejection.

The examiner further argues that Lange discloses a clamping screw that can be screwed into element 215 in the base part 20 so that the clamping part 9b can be tensioned against the base part. Appellant disagrees with this interpretation of Lange.

For the reasons set forth above, component 9b of Lange cannot be considered a clamping part. Further, component 9b is fastened with rivets to component 9a. Screwing a bolt through component 9b and into element 215 of base part 20 does not provide the claimed clamping and does not tension the "clamping part 9b" of Lange against the base part 20. Further, the examiner has not provided any arguments detailing where this feature is disclosed in Lange.

Appellant respectfully asserts that Lange does not anticipate claim 2, and requests that the rejection be reversed.

Claim 3

Claim 3 recites that the carriage is symmetrical with respect to an axis extending through the bore. The carriage as defined in claim 1 includes the base part and the clamping part.

The examiner is arguing that Lange discloses that the base part 20 and the clamping part 9b are symmetrical about a bore in the base part. Base part 20 of Lange is part of clamping jaw 2 that cooperates with clamping part 10a, 10b to clamp the window pane. From Figure 1 of Lange, base part 2 and clamping part 9 do not seem to form a carriage that is symmetrical with respect to an axis extending through a bore in the base part 2.

Thus, appellant respectfully asserts that Lange does not anticipate claim 3, and requests that the rejection be reversed.

Claim 4

Claim 4 recites that the arresting mechanism comprises a plurality of recesses and a tab that engages one of the plurality of recesses based on a desired mounting orientation to mount the clamping part to the base part in one of the at least two positions.

The examiner argues that Lange discloses a plurality of recesses and a tab that engages in one of the recesses based on a desired mounting orientation. The examiner has not specifically identified by number which recesses in Lange correspond to the claimed recesses, and has not specifically identified by number the tab in Lange that can be selectively installed in these recesses.

Appellant respectfully asserts that Lange does not disclose these features as defined in claim 4. As discussed above, Figure 3 of Lange clearly shows that there is only one mounting orientation possible for attachment of component 9b to component 9a. Component 9b is attached to component 9a by a plurality of rivets that extend through openings 98. To accurately and precisely orientate component 9b relative to component 9a, openings 97b are provided in component 9b that receive projections 97a formed on component 9a. Any rotation of component 9b relative to component 9a out of the position of component 9b shown in Figure 3 would prevent components 9a and 9b from being attached to each other.

Lange does not disclose an arresting mechanism comprised of a plurality of recesses and a tab that is mounted in one of the recesses based on a desired mounting orientation to mount the clamping part to the base part in one of at least two positions. Thus, appellant respectfully asserts that Lange does not anticipate claim 4, and requests that the rejection be reversed. Further, appellant respectfully requests that the examiner provide more detailed arguments regarding where this claimed feature is shown such that appellant is not left to guess at the examiner's interpretation of Lange.

Claim 7

Claim 7 recites that the arresting mechanism comprises an elongate recess and a tab that engages a portion of the elongate recess based on the mounting orientation, wherein the tab engages a different portion of the elongate recess for each of the at least two positions.

The examiner argues that Lange discloses an elongate recesses and a tab that engages in a portion of the recesses based on a desired mounting orientation. The examiner has not specifically identified by number which recess in Lange corresponds to the claimed elongate recess, and has not specifically identified by number the tab in Lange that can be selectively engaged with different portions of the elongate recess for different mounting orientations.

As discussed above with regard to claim 4, Figure 3 of Lange clearly shows that there is only one mounting orientation possible for attachment of component 9b to component 9a. Each of the openings shown in the various components 9a, 9b, 20 of Lange appear to be circular openings. As such, Lange does not appear to have an elongate recess that that cooperates with a

tab to provide multiple different mounting orientations as claimed. Thus, appellant respectfully asserts that Lange does not anticipate claim 7, and requests that the rejection be reversed. Further, appellant respectfully requests that the examiner provide more detailed arguments regarding where this claimed feature is shown such that appellant is not left to guess at the examiner's interpretation of Lange.

Claim 8

Claim 8 recites that the elongate recess is arcuate. For the reasons set forth above, Lange does not disclose the elongate recess as claimed. Lange certainly does not disclose an elongate recess having an arcuate shape. Thus, appellant respectfully asserts that Lange does not anticipate claim 8, and requests that the rejection be reversed. Further, appellant respectfully requests that the examiner provide more detailed arguments regarding where this claimed feature is shown.

Claims 13, 17, and 21

Claim 13 recites a base part that is movably mountable on a rail, the base part having a bore, wherein the carriage is symmetrical with respect to an axis extending through the bore. For the reasons set forth above with regard to claim 3, Lange does not disclose a carriage that is symmetrical with respect to an axis extending through a bore in the "base part 20".

Claim 13 also recites a clamping part mounted on the base part, wherein the base part and the clamping part accommodate a vehicle pane therebetween. The examiner argues that

component 9b in Lange corresponds to the claimed clamping part. For the reasons set forth above with regard to claim 1, appellant respectfully asserts that one of ordinary skill in the art would not consider component 9b as corresponding to appellant's claimed clamping part.

Claim 13 also recites the feature of an arresting mechanism that secures the clamping part on the base part in one of at least two positions, each position corresponding to a different mounting orientation. For the reasons set forth above with regard to claim 1, Lange does not disclose an arresting mechanism that allows the examiner's "clamping part 9b" to be secured to the examiner's "base part 20" in one of at least two different mounting orientations.

Claim 13 also recites that the arresting mechanism comprises a clamping screw that can be screwed into the bore in the base part so that the clamping part can be tensioned against the base part. For the reasons set forth above with regard to claim 2, Lange does not disclose this feature.

Thus, for the many reasons set forth above, Lange does not anticipate claims 13, 17, and 21, and appellant respectfully requests that the rejection be reversed.

Claim 16

Claim 16 recites that the arresting mechanism further comprises an arcuate elongate recess and a tab that engages a portion of the arcuate elongate recess based on a desired mounting orientation, wherein the tab engages a different portion of the arcuate elongate recess for each of the at least two positions. For the reasons set forth above with regard to claim 7, Lange does not disclose this feature.

Claim 16 also recites that a center of curvature of the arcuate elongate recess aligns with a center of the clamping screw. Lange does not disclose an elongate recess and clamping screw as claimed. Further, there certainly is no disclosure in Lange of an elongate recess having a center of curvature that aligns with a center of the clamping screw. Thus, Lange cannot anticipate claim 16.

The examiner has not specifically identified the components in Lange that correspond to the claimed "clamping screw" and "arcuate recess, thus it is difficult for appellant to respond to the rejection of claim 16. Appellant respectfully requests that the examiner provide more detailed arguments regarding where this claimed feature is shown such that appellant is not left to guess at the examiner's interpretation of Lange.

B. Obviousness Rejection Over Lange in view of Shibanushi

Claims 11, 12, 18, and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lange in view of Shibanushi. For the reasons set forth above, Lange does not disclose, suggest, or teach the features of the claimed invention. Shibanushi does not make up for the deficiencies of Lange.

Claims 11 and 18

Claim 11 recites at least one barb on the base part that engages the at least one resilient pad to retain the at least one resilient pad on the clamping part.

The examiner admits that Lange does not disclose this feature and relies on teachings from Shibanushi to modify Lange. Specifically, the examiner argues that Figure 7 of Shibanushi

discloses a base part for mounting a pad and window pane where the base part has barbs that allow the pad to be positioned at any position along the base. Appellant disagrees.

From Figure 8 it is clear that that glass holder 100 with the triangular pattern shown in Figure 7 does not comprises barbs that would engage a pad. The cross-sectional view of Figure 8 does not disclose any type of barbed feature on a base part. Further, the window pane 104 is received directly within the glass holder 100 and thus there would be no reasons to form barbs on an inner surface of the glass holder 100.

Even if Figures 7 and 8 could be interpreted as teaching a base part including at least one barb for engaging a resilient pad, there is no motivation or suggestion to modify Lange in the manner suggested by the examiner. When it is necessary to select elements from different references in order to form the claimed invention, there must be some suggestion or motivation to make the selection. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. The extent to which such suggestion must be explicit in, or referred from, the references, is decided on the facts of each application in light of the prior art and its relationship to the claimed invention.

Shibanushi discloses that the embodiment shown in Figures 7 and 8 is not a desired configuration. Thus, Shibanushi teaches away from the utilization of the features shown in Figure 7. Thus, there is no motivation or suggestion to modify Lange in the manner argued by the examiner.

The examiner seems to be selecting elements from the prior art in an attempt to meet all of the claim limitations. It is impermissible to engage in a hindsight reconstruction of the claimed invention, using applicant's structure as a template and selecting elements from the references to fill the gaps. The references themselves must provide some teaching whereby applicant's combination would have been obvious. In re Gorman, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). Appellant respectfully asserts that the references do not disclose, suggest, or teach the features of claims 11 and 18, and further that there is no motivation or suggestion to modify Lange with Shibanushi.

Claims 12 and 19

Claim 12 recites that the at least one barb comprises a plurality of barbs, each barb associated with one of the at least two positions of the clamping part. For the reasons set forth above with regard to claim 11, the references do not disclose, suggest, or teach the claimed barbs. Also for the reasons set forth above with regard to claim 11, there is no motivation or suggestion to modify Lange with Shibanushi.

Finally, none of the references disclose, suggest, or teach barbs on a base part where each barb is associated with one of the at least two positions that correspond to different mounting orientations. The examiner admits Lange does not disclose this feature. Shibanushi also does not disclose this feature. There is absolutely no basis for the examiner's assertion that the glass holder 100 of Figure 7 includes two different barbs that are associated with different mounting

orientations of a clamping part on a base part. Appellant respectfully asserts that the examiner has failed to set forth a *prima facie* case of obviousness.

Thus, for the reasons set forth above, appellant respectfully asserts that the rejection of claims 12 and 19 under 35 U.S.C. 103(a) is improper and requests that the rejection be reversed.

CONCLUSION

For the reasons set forth above, the rejection of all claims is improper and should be reversed. Appellant earnestly requests such an action.

Respectfully submitted,

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Dated: September 30, 2005

CERTIFICATE OF MAIL

I hereby certify that the enclosed Appeal Brief is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30 day of September, 2005.

Laura Combs

CLAIMS APPENDIX

1. A carriage for a window lifter, comprising:

a base part that is movably mountable on a rail;

a clamping part mounted on the base part, wherein the base part and the clamping part accommodate a vehicle pane therebetween; and

an arresting mechanism that secures the clamping part on the base part in one of at least two positions, each of the at least two positions corresponding to a different mounting orientation.

2. The carriage as claimed in claim 1, wherein the arresting mechanism comprises a clamping screw which can be screwed into a bore in the base part so that the clamping part can be tensioned against the base part.

3. The carriage as claimed in claim 2, wherein the carriage is symmetrical with respect to an axis extending through the bore.

4. The carriage as claimed in claim 1, wherein the arresting mechanism comprises a plurality of recesses and a tab that engages one of the plurality of recesses based on a desired mounting orientation to mount the clamping part to the base part in one of the at least two positions.

5. The carriage as claimed in claim 4, wherein the tab is formed at an end of the clamping part and wherein the plurality of recesses is disposed in the base part.

6. The carriage as claimed in claim 5, wherein the plurality of recesses comprise diametrically opposed pairs of recesses.

7. The carriage as claimed in claim 1, wherein the arresting mechanism comprises an elongate recess and a tab that engages a portion of the elongate recess based on the mounting orientation, wherein the tab engages a different portion of the elongate recess for each of the at least two positions.

8. The carriage as claimed in claim 7, wherein the elongate recess is arcuate.

9. The carriage as claimed in claim 1, further comprising a nipple holder adapted to receive a cable that moves the carriage along the rail.

10. The carriage as claimed in claim 1, further comprising at least one resilient pad disposed between the clamping part and the base part, wherein the at least one resilient pad forms a pocket for receiving the vehicle pane.

11. The carriage as claimed in claim 10, further comprising at least one barb on the base part that engages the at least one resilient pad to retain the at least one resilient pad on the clamping part.

12. The carriage as claimed in claim 11, wherein the at least one barb comprises a plurality of barbs, each barb associated with one of the at least two positions of the clamping part.

13. A carriage for a window lifter, comprising:

a base part that is movably mountable on a rail, the base part having a bore, wherein the carriage is symmetrical with respect to an axis extending through the bore;

a clamping part mounted on the base part, wherein the base part and the clamping part accommodate a vehicle pane therebetween;

an arresting mechanism that secures the clamping part on the base part in one of at least two positions, each position corresponding to a different mounting orientation, wherein the arresting mechanism comprises a clamping screw which can be screwed into the bore in the base part so that the clamping part can be tensioned against the base part; and

at least one resilient pad disposed between the clamping part and the base part, wherein the at least one resilient pad forms a pocket for receiving the vehicle pane.

14. The carriage as claimed in claim 13, wherein the arresting mechanism further comprises a plurality of recesses and a tab wherein the plurality of recesses comprise diametrically opposed

pairs of recesses disposed with respect to a middle axis of the bore in the base part and wherein the tab engages one of said plurality of recesses based on a desired mounting orientation to mount the clamping part to the base part in one of the at least two positions.

15. The carriage as claimed in claim 14, wherein the tab is formed at an end of the clamping part and wherein the plurality of recesses is disposed in the base part.

16. The carriage as claimed in claim 13, wherein the arresting mechanism further comprises an arcuate elongate recess and a tab that engages a portion of the arcuate elongate recess based on a desired mounting orientation, wherein the tab engages a different portion of the arcuate elongate recess for each of the at least two positions, and wherein a center of curvature of the arcuate elongate recess aligns with a center of the clamping screw.

17. The carriage as claimed in claim 13, further comprising a nipple holder adapted to receive a cable that moves the carriage along the rail.

18. The carriage as claimed in claim 13, further comprising at least one barb on the base part that engages a lip on the at least one resilient pad to retain the at least one resilient pad on the clamping part.

19. The carriage as claimed in claim 18, wherein the at least one barb comprises a plurality of barbs, each barb associated with one of the at least two positions of the clamping part.

20. The carriage as claimed in claim 1, wherein the carriage is adjusted along the rail to move the vehicle pane between open and closed positions.

21. The carriage as claimed in claim 13, wherein the carriage is adjusted along the rail in a direction transverse to the axis extending through the bore.

EVIDENCE APPENDIX

(1) US 6041549 to Schust et al. – Copy attached.

RELATED PROCEEDINGS APPENDIX

None